

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-09000-smb

4 Adversary No. 10-05160-smb

5 - - - - - x

6 In the Matter of:

7
8 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF B.,

9 Plaintiff

10 v.

11
12 THE LANNY ROSE REVOCABLE TRUST

13 Defendant

14
15 - - - - - x

16 U.S. Bankruptcy Court

17 One Bowling Green

18 New York, New York

19 May 6, 2014

20 10:38 AM

21
22 B E F O R E :

23 HON STUART M. BERNSTEIN

24 U.S. BANKRUPTCY JUDGE

25 ECR OPERATOR: F. FERGUSON

1 Hearing re: Motion to Withdraw as Attorney filed by
2 Gabrielle J. Pretto on behalf of Lanny Rose

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Transcribed by: Jamie Gallagher

1 A P P E A R A N C E S :

2 BAKER HOSTETLER

3 Attorney for Irving Picard, Trustee

4 45 Rockefeller Plaza

5 New York, NY 10111

6

7 BY: NICHOLAS J. CREMONA, ESQ.

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9 LAX & NEVILLE, LLP

10 Attorney for Lanny Rose

11 1450 Broadway

12 35th Floor

13 New York, NY 10018

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15 BY: GABRIELLE J. PRETTO, ESQ.

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1 P R O C E E D I N G S

2 THE COURT: Madoff.

3 MS. PRETTO: Good morning, Your Honor. Gabrielle
4 Pretto from Lax & Neville on behalf of Lanny Rose.

5 As you can see in our papers, Mr. Rose wishes to
6 proceed as a pro se defendant in the proceeding.

7 THE COURT: That's why I wanted you to come in. I
8 don't believe the trust, can it be a pro se?

9 MS. PRETTO: That's correct, Your Honor, and
10 attached to Mr. Rose's affidavit, he has presented the
11 revocation of the Revocable Trust, which was effectuated on
12 April 16th, 2013. So, the trust is no longer in existence.

13 THE COURT: But my -- I guess my understanding is
14 that the trust received transfers, how does the revocation
15 affect the trust's liability --

16 MS. PRETTO: And that --

17 THE COURT: -- and also its status as a defendant,
18 which is what we're really talking about?

19 MS. PRETTO: And that's something that the trustee
20 reached out early this morning to discuss possibly
21 substituting Mr. Rose as a subsequent transferee.

22 THE COURT: Well, he's already a defendant in his
23 individual capacity.

24 MS. PRETTO: But just to ensure that, you know,
25 the proper defendants are maintained in this action. That's

1 something that I'm happy to confer with the trustee to
2 substitute the correct defendants, but we just started
3 communicating about that early this morning before today's
4 proceeding.

5 THE COURT: Is the contention that Mr. Rose is a
6 subsequent transferee of the trust? In other words, the
7 distribution from the trust?

8 MR. CREMONA: That's correct, Your Honor. The
9 issue or concern that the trustee had was the very issue
10 that Your Honor raised that the papers purport to dissolve
11 the initial transferee defendant and I share the concern
12 that although I don't know, as I stand here today, whether
13 that's appropriate or effectuated properly under applicable
14 law, my concern is that I don't want to address arguments
15 that that somehow affects the potential avoidance and/or
16 recovery from Mr. Rose as a subsequent transferee.

17 THE COURT: Here's what I think. Look, I saw what
18 the individual client signed. He doesn't want you, and I'll
19 grant you leave to withdraw. That said, I'll stay this
20 adversary proceeding for a period of 30 days to permit the
21 trust or the individual to hire substitute counsel. If that
22 doesn't occur within 30 days, you can make a motion to
23 strike the answer of the trust and enter a default judgment
24 against the trust on the avoidance claim because as I
25 understand the law, the trust can't appear pro se, and if it

1 doesn't have a lawyer, I don't know what -- you know, what
2 the alternatives are.

3 So, Ms. Pretto, you might want to communicate this
4 to the individual --

5 MS. PRETTO: Yes, Your Honor, absolutely, I will.

6 THE COURT: Do you know if he intends to get
7 another lawyer?

8 MS. PRETTO: He does not. He wants to proceed pro
9 se.

10 THE COURT: Is that because of cost or he just --

11 MS. PRETTO: Yes.

12 THE COURT: Did the trust have any money in it
13 when it was dissolved?

14 MS. PRETTO: I don't believe it did.

15 THE COURT: Well, I just --

16 MR. CREMONA: I'm sorry, Your Honor, that was my
17 concern as well. The affidavit annexed by Mr. Rose
18 indicates that the trust has been dissolved and any assets
19 that it had were -- should be transferred to him post
20 complaint in April of 2013. So, that raised issues that we
21 wanted to address. We thought, given the fact that they're
22 both defendants in the same lawsuit, the solution that I
23 proposed to Ms. Pretto was that we enter into a stipulation
24 substituting Mr. Rose in all effects as --

25 THE COURT: As the initial transferee?

1 MR. CREMONA: Exactly, Your Honor, and we've
2 done --

3 THE COURT: And basically pierce the veil or
4 consolidate --

5 MR. CREMONA: For all purposes within the action,
6 he would be deemed to be the initial transferee.

7 THE COURT: You know what, I think you may wind up
8 in the same place because they're all parties and if you
9 make a motion to enter a default judgment against the trust,
10 if Mr. Rose is a party, he's going to be bound by that
11 determination and he'll get the avoidance of the initial
12 transfer. I'm pretty sure I'm right on the law in terms of
13 appearing pro se.

14 MS. PRETTO: Yes.

15 THE COURT: Obviously, if that motion is made,
16 Mr. Rose or the trust, I suppose, can argue that it's
17 entitled to appear pro se and I shouldn't enter the full
18 judgment for that reason. Okay?

19 So, what I'll ask you to do is submit an order
20 either on consent, or settle an order if you can't represent
21 that Mr. Cremona consents -- granting a motion for leave to
22 withdraw staying the adversary proceeding to 30 days, and
23 that's basically it. I'm not going to tell the trustee what
24 he should do or what the result of that motion is going to
25 be, because I'm not sure but -- fairly sure, but I'm not

1 completely sure.

2 And then, you know, if there's no substitute after
3 30 days, you can proceed. And if the law is that there is
4 trust -- the trust is pro se, you strike the answer and
5 enter a default judgment, then that's the law.

6 MR. CREMONA: Your Honor, my only concern is that
7 according to these papers, the trust -- I'm concerned about
8 the argument that the trust has already been dissolve
9 unilaterally by this statement that's --

10 THE COURT: Well, if it's been dissolved, it's
11 been dissolved. I don't know if it changes anything. The
12 trust is still a defendant. The trust is still the initial
13 transferee, from what I can see, and even if you go after
14 Mr. Rose, you still have to avoid the initial transfer.

15 So, I don't know if it's going to make much of a
16 difference in the end if the trust really didn't have money
17 since this action was filed. Obviously if the trust
18 transferred money to Mr. Rose in connection with the
19 dissolution or any time post-petition, you can assert
20 whatever rights you think you have. All right? All right,
21 thank you very much.

22 (A chorus of thank you)

23 (Proceedings concluded at 10:44 a.m.)

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I N D E X

RULINGS

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Motion to Withdraw as Attorney filed by	7	19
Gabrielle J. Pretto on behalf of		
Lanny Rose		

C E R T I F I C A T I O N

I, Jamie Gallagher, certify that the foregoing transcript is
a true and accurate record of the proceedings.

Jamie
Gallagher

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